

APPEAL NO. 033096  
FILED JANUARY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 20, 2003. The hearing officer determined that the appellant (claimant) is not entitled to an extension of the statutory maximum medical improvement (MMI) date pursuant to Section 408.104 and that the claimant waived the right to dispute the Texas Workers' Compensation Commission's (Commission) denial of the request to extend the statutory MMI date by not disputing within 10 days of receiving the denial. The claimant appeals these determinations. The respondent (self-insured) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.104 is entitled [MMI] After Spinal Surgery and applies to claims for injuries that occur on or after January 1, 1998. It provides in part:

- (a) On application by either the employee or the insurance carrier, the commission by order may extend the 104-week period described by Section 401.011(30)(B) if the employee has had spinal surgery, or has been approved for spinal surgery under Section 408.026 and commission rules, within 12 weeks before the expiration of the 104-week period. If an order is issued under this section, the order shall extend the statutory period for [MMI] to a date certain, based on medical evidence presented to the commission.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.11(g) (Rule 126.11(g)) provides that an injured employee or a carrier "may dispute the approval, denial, or length of the extension granted by the commission order by filing a request for a benefit review conference [BRC] . . . no later than ten days after the date the order is received." Rule 126.11(h) states that if the request for the BRC "is not received by the commission within ten days after the date the order granting or denying the extension was received by the disputing party, the parties waive their right to dispute the commission order." The claimant asserts that his compliance with the provisions of Rule 126.11(g) was not required because the Commission failed to comply with the requirements of 126.11(b), which provide that the Commission shall issue an order in response to a request for an extension of statutory MMI within 10 days after receiving the request. However, where the Commission's noncompliance with a rule provision does not prevent the claimant from complying with his obligations under the rules, the Commission's noncompliance does not necessarily relieve the claimant of his compliance obligations. See Texas Workers Compensation Commission Appeal No. 033014, decided December 23, 2003. The claimant alternatively argues that he did dispute the denial of the extension as

evidenced by Commission records indicating that he contacted the Commission within 10 days of the issuance of the denial. Commission records indicate that the claimant made phone calls to the Commission after the issuance of the denial, but prior to the 10-day deadline and indicated that he wanted to speak with the Official Actions Officer who issued the denial; however, the hearing officer noted and Commission records reflect that there is no indication that the claimant actually disputed the denial until he orally requested a BRC on July 7, 2003. Based upon the claimant's concession that he received the denial on June 19, 2003, the 10-day deadline would have been June 30, 2003. Accordingly, we perceive no error in the hearing officer's determination that the claimant waived the right to dispute the Commission's denial of his request for an extension of the statutory MMI date.

Because we have affirmed the waiver determination, we need not address the issue of whether the claimant was entitled to the extension, as regardless of the validity of the Commission's order, the disputing party must file a BRC request within the 10-day period for doing so or the party loses the right to challenge that order. If the waiver provision of Rule 126.11(h) were not so interpreted, it would be meaningless. Texas Workers Compensation Commission Appeal No. 012325, decided November 21, 2001.

We note the claimant's arguments relating to liberal construction of the Act but cannot agree that the doctrine of liberal construction supports clear provisions of the rules to be read out of existence. See Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge